

Hardyal Prem

Vs

State of Rajasthan

(S.R. Pandian, K. Jayachandra Reddy JJ)

Criminal Appeal No. 612 of 1990 and Criminal Appeal No. 239 of 1985

09.11.1990

JUDGMENT

1. Delay condoned. Special leave granted.

2. Both the appeals arise by a common judgment made in Criminal Appeal No. 689/ 76 dated 2nd December, 1983 on the file of the High Court of Rajasthan, Jaipur. Bench at Jaipur. Before the Trial Court these two appellants along with one other accused by name, Narain, who was arrayed as accused No. 1 were tried for offences under Sections 302 and 392 IPC. In this connection, it may be noted that accused Narain who is said to be undergoing his sentence of life imprisonment, is not before us. According to the prosecution that on the night of 29-9-74, in a field situated in Moza Tan Nayabas Ki Dhani, the appellants and Narain murdered the deceased Rupa Gujar aged about 65 and also committed the offence of robbery by removing her ornaments. To substantiate above charges, PWs. 1 to 20 inclusive of the official witnesses were examined. It is said that the deceased left the well situated in her field at about 6 p. m. on the date of the occurrence. At that time of leaving, the deceased was found to have been wearing some silver ornaments (Articles 1 to 6). The deceased did not return to the well till the next morning. She was not also found in her house. A frantic search was made but it proved futile. On the evening of 2-10-74 it was informed by some children that a dead-body of a woman was lying in the field and the hands and legs of the deceased have been cut and the ornaments were missing. P.W. 1, son of the deceased laid a report at Bandikuin Police Station on 2-10-74 at about 5-30 A.M. P.W. 18 took up the investigation, went to the site and prepared a site plan. Dead body was highly mutilated and decomposed and part of the body was eaten away by animals. During the course of investigation PW 18 examined witnesses and arrested these two appellants and Narain on 5-10-74. The respective houses of these two appellants and Narain were searched on 7-10-74 which led to the recovery, of a dagger from the house of the appellant Prem and a gandasa and a silver kada from the house of Narain but nothing was recovered from the house of Hardyal. On 8-10-74 again the house of the appellant Prem was searched and one silver kada was recovered. On the same day the house of Hardyal was searched which led to the recovery of certain silver articles, namely, a bali (ear ring), silver bangles, silver rings and a silver locket . Thereafter on 29-10-74 the house of Hardyal again was searched and certain clothes of the accused which said to have been stained with blood were recovered. All the ornaments recovered during the course of the searches are marked as articles 1 to 6. After completion of the investigation PW 18 filed the charge-sheet.

3. The Trial Court on the strength of the evidence adduced by the prosecution convicted the appellants and Narain under S. 302 read with S. 34 IPC and sentenced each of them to undergo

imprisonment for life and also convicted them under Section 392 IPC and sentenced each of them to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 5001-. The High Court, on appeal, has confirmed the judgment of the Trial Court.

4. Admittedly there is no eye-witness to the occurrence. The prosecution rests its case only on certain pieces of circumstantial evidence to substantiate these charges levelled against these two appellants and Narain. Those circumstances are formulated in paragraph 33 of the judgment of the Trial Court.

5. The first circumstance relied upon by the prosecution is that these appellants made an inquiry from the deceased herself about her movement which she had later on reported to her sons PWs. 1 & 7 and her husband. It transpires from the evidence that this report was made by the deceased about 15 or 20 days prior to her death. This piece of evidence, in our view, cannot serve as an incriminating circumstance involving these appellants and Narain in this dastardly murder. The second piece of evidence is that of PWs 3 & 4. These two witnesses speak about the suspicious movement of these two appellants in the company of Narain on the night of occurrence at about 8 or 9 p.m. Though the investigation started even on 2-10-74, these two witnesses who were the residents of the same locality, did not volunteer any statement at the earliest. They offered themselves as witnesses only after 3 or 4 days after the recovery of the dead body. The third piece of circumstantial evidence pressed into service is that the appellant Prem at the time of arrest was in possession of a letter exhibit P26 written under his hand admitting that he had committed some illegal act. The courts below have strongly relied upon this circumstance as a piece of formidable evidence. In our opinion this evidence cannot be relied upon for the reasons-namely (1) that the story that Prem was carrying on a letter admitting an illegal act is highly unbelievable and (2) that the letter does not make any reference to this particular case. The other circumstantial piece of evidence relied upon by the courts below is the recovery of two weapons exhibits P8 and P7 from the houses of Prem and Narain respectively on a search made on 7-10-74. These two weapons are said to have been stained with human blood but the prosecution had not satisfactorily established that the blood found on these two weapons tallied with the blood group of the deceased. Lastly we are left with the evidence relating to the recovery of the ornaments, articles 1 to 6. These ornaments are said to have been recovered from the houses of the appellants on various dates i.e. a silver kada from the house of Narain on 7-10-74, some other silver articles from the houses of Prem and Hardyal on 8-10-74 and the blood stained clothes of Hardyal from his house on 29-10-74. Though much reliance was placed- on the recovery of these ornaments, we are unable to agree with the view of the courts below for more than one reason. First, in exhibit P-1, there is absolutely no description of the ornaments of the deceased which she is said to have been wearing on the date of occurrence. Secondly, these ornaments were not recovered in pursuance of any statement made by the appellants. Thirdly, though even on 7-10-74 the houses of the appellants were searched, no ornament was recovered. Similarly no blood stained cloth was recovered from the house of Hardyal till 29-10-74 i.e. for nearly a month from the date of occurrence. Fourthly, these appellants and Narain though were arrested even on 5-10-74, it seems that no effort has been made by the police either on 5-10-74 or on 6-10-74 to make searches of the respective houses of the accused. When these appellants and Narain had been arrested even on 5-10-74, it is incomprehensible that the inmates of the houses of these appellants were safely keeping these ornaments which were the subject matter of robbery thereby enabling the police to recover these articles on 8-10-74. Fifthly, these ornaments are of common pattern usually worn by the ladies in Rajasthan. Though the appellants are claiming these ornaments as belonging to them, we are unable to accept the appellants statement in the absence of tangible evidence in support of their statements, instead hold that this piece of evidence relating to the recovery of Ornaments was not at all worth accepting.

6. In the present case in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn by the prosecution, have not been fully and satisfactorily established beyond all reasonable doubt. In short, the evidence on the record falls short of proving the guilt of the appellants and Narain.

7. Hence, we set aside the conviction of these two appellants recorded under S. 302 read with S. 34 IPC and under S. 392 IPC and the sentences imposed therefor. The bail bonds of Prem are cancelled.

8. Though Narain has not preferred any appeal before us, as we are fully satisfied that the evidence against Narain is not at all satisfactory : we feel that he is also entitled to the same benefit as in the case of the two appellants. Therefore, we set aside the conviction of Narain also under S. 302 read with S. 34 IPC and under S. 392 and the sentences imposed therefor. Consequent upon the setting aside of the conviction of Narain, though he has not preferred any appeal before us, he is directed to be released forthwith, unless his detention is warranted for some other cause.

9. Both the Appeals are allowed.

Appeals allowed.

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